

HAMILTON COUNTY MUNICIPAL COURT

HAMILTON COUNTY, OHIO

CRIMINAL DIVISION

- - -

STATE OF OHIO,

:

Plaintiff,

:

:

vs.

: CASE NO. 01 CRB 204079

:

ANTONIO MOORE,

:

Defendant.

:

- - -

COMPLETE TRANSCRIPT OF PROCEEDINGS

- - -

APPEARANCES:

Gertrude Garland, Esq.,

On behalf of the Plaintiff.

Edward C. Perry, Esq.,

On behalf of the Defendant.

BE IT REMEMBERED that upon the

Trial of this cause, in the Hamilton County

Municipal Court, before the Honorable John H.

Burlew, one of the said judges of the said court,

on the date stated herein, the following

proceedings were had, to wit:

I N D E X

WITNESSES

For Plaintiff: page

OFFICER MARCUS MCNEIL
Direct Examination by Ms. Garland 5:22
Cross-Examination by Mr. Perry 10:8

OFFICER MICHAEL SCHULTE
Direct Examination by Ms. Garland 11:13

EXHIBITS

For Plaintiff:

1 Photo of Truck parked
Identified 7:18
Received 18:18

For Defendant:

1 Photo of Sign
Marked for Identification 17:13

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MORNING SESSION, July 24, 2001

(State's Exhibit Number 1 was marked
for identification.)

MS. GARLAND: Antonio Moore.

MR. PERRY: Ready for trial, Judge.

THE COURT: Swear the witnesses.

(witnesses sworn.)

MS GARLAND: State would request
separation of witness, Your Honor.

THE COURT: All right. Any
witnesses, except the first witness, step
into the hallway. Please do not discuss
your testimony with each other until this
case is over.

(Rule invoked.)

THE COURT: Opening statements?

MS. GARLAND: State would waive
opening.

MR. PERRY: We have an opening,
Judge.

Your Honor, the evidence will show
that Tony Moore is 42 years old. He's
married. He's been married for 14 years.
He's had three children. He's a lifelong
resident of the Cincinnati area. And he

1 was educated in Cincinnati.

2 After he graduated from college at
3 UC, he began to work for five years at
4 Milicron. He left Milicron for GE, where
5 he worked for 13 years. When he left
6 General Electric he bought a minimall. It
7 is also the subject of today's proceedings.
8 He owns and operates four stores at the
9 minimall.

10 As the owner and operator he works
11 between 12-hour and 14-hour days. On June
12 21, 2001, Tony had worked a full day. It
13 was about eight o'clock when he drove over
14 to the Fifth Third branch located in the
15 Kroger store. It was about five minutes
16 before closing. He had gone to the Fifth
17 Third bank to make his daily deposits, as
18 he does every night. Tony parked in a spot
19 in the -- marked with a sign that said:
20 Reserved For Police.

21 The evidence will show that a police
22 officer asked Tony to move his truck. Tony
23 did not move the truck as requested, but he
24 did tell the officer that should he think
25 to propose a citation, it would be in

1 order, or a ticket would be in order, or
2 even towing the car would be in order. A
3 citation was not issued. The car was not
4 towed. The evidence will show that Tony
5 was arrested. The evidence will show that
6 Tony's conduct was not criminal. And did
7 not rise to the level of disorderly
8 conduct. That's all we have right now,
9 Judge.

10 THE COURT: Thank you very much.
11 First witness?

12 MS. GARLAND: First witness is
13 Officer McNeil.

14 OFFICER MARCUS MCNEIL
15 having been first duly sworn, was examined and
16 testified as follows:

17 THE COURT: Officer, will you state
18 your name into the microphone. Place of
19 assignment.

20 THE WITNESS: Officer Marcus McNeil.
21 District 5. McNeil, M-C-N-E-I-L.

22 DIRECT EXAMINATION

23 BY MS. GARLAND:

24 Q. And, Officer, were you so employed on
25 June 21st of 2001?

1 A. Yes, I was.

2 Q. On that day, did you come in contact
3 with Antonio Moore?

4 A. Yes, I did.

5 Q. Is Mr. Moore in the courtroom today?

6 A. Yes, he is.

7 Q. Would you indicate where he's seated,
8 what he's wearing?

9 A. Male black sitting at defense table,
10 with the black suit, white shirt.

11 Q. Where were you when you came in
12 contact with the defendant?

13 A. I was on an off-duty detail at Kenard
14 Krogers.

15 Q. Is that location City of Cincinnati,
16 Hamilton County, Ohio?

17 A. Yes, it is.

18 Q. Okay. Could you describe for the
19 court what happened?

20 A. Mr. Moore pulled into the parking
21 lot. He parked in the space that's designed for
22 police vehicles only, due to the substation. He
23 got out of his truck, walked into the store, where
24 I asked Mr. Moore to move his car. He told --
25 this is the second time he's done this to me. He

1 told me: Fuck you, do what you have to do.
2 There's no city ordinance for parking in a parking
3 space that's designed for police vehicles.

4 I asked him again to move. He told
5 me no, do what I have to do. I then asked for
6 another car to come.

7 Q. You say there's a substation?

8 A. Yes.

9 Q. What does that mean?

10 THE COURT: It's a minipolice
11 station. I know.

12 Q. Okay. And the parking place spot is
13 reserved?

14 A. Yes. It's two spots up in front of
15 the store. They face each other. There's a pole
16 in the middle that says: No Parking. Police
17 vehicles only.

18 Q. I'm going to hand you what's been
19 marked for identification as State's Exhibit
20 Number 1. What is that?

21 A. That's Mr. Moore's truck parked in
22 the parking space.

23 Q. Okay. And what else is in the
24 picture? Or when was this picture taken?

25 A. This was taken June 21, 2001.

1 Q. Okay. And was -- does that depict
2 the car parked in the --

3 A. Yes.

4 Q. -- spot that's reserved for the
5 police?

6 A. That's correct.

7 Q. Okay. And when you called for
8 backup, what happened?

9 A. The other car came. We -- then we
10 still continued to ask Mr. Moore just to move his
11 car. He -- then his behavior became
12 inappropriate.

13 Q. What, specifically, did he do?

14 A. He began to -- it wasn't real loud,
15 but he was persistent to where a crowd gathered,
16 and just that he was -- he had more opportunity to
17 park in that spot, just as well as we did. There
18 was a thing about the justice department being
19 there, and he wanted to prove a point to everybody
20 that, you know, this is not a city ordinance that
21 he couldn't park there.

22 Q. Okay. How many people would you say
23 gathered?

24 A. Maybe ten.

25 Q. Okay. And did this cause a problem

1 for the police?

2 A. Yes.

3 Q. How so?

4 A. People gathered, and everybody wanted
5 to know what was going on, and then kind of -- it
6 almost got in the way of what we were trying to do
7 on hand with Mr. Moore. Everybody was trying to
8 figure out what was going on. People exiting out
9 of the store.

10 Q. Okay. And how did you say it got in
11 the way?

12 A. Well, we were on the apron, the front
13 apron, which is just the walkway in front of the
14 store, which it's not wide enough for more than
15 two or three people to stand on. We were there,
16 and these people coming out of the store, it
17 started getting crowded.

18 Q. And now you say at one time the
19 defendant cursed at you, fuck you. Did he make
20 any other specific statements?

21 A. No, that was just it. I'm going to
22 the store. I got business to do with the bank.
23 Do what you have to do.

24 Q. Okay. And how many times would you
25 say you asked him to move his car?

1 A. Myself, maybe eight times.

2 Q. And who placed the defendant under
3 arrest?

4 A. Officer Schulte.

5 MS. GARLAND: Okay. That's all I
6 have, Your Honor.

7 THE COURT: Cross-examine, Mr. Perry?

8 CROSS-EXAMINATION

9 BY MR. PERRY:

10 Q. Did the conversation between you and
11 Tony take place inside of Krogers?

12 A. It took place right in the -- as you
13 walk to the first set of double doors, where they
14 keep the basket carts at.

15 Q. It didn't happen out in the parking
16 lot?

17 A. No.

18 MR. PERRY: Nothing further.

19 THE COURT: Redirect?

20 MS. GARLAND: No, Your Honor.

21 THE COURT: You may step down,
22 officer.

23 (Witness excused.)

24 MS. GARLAND: State will call officer
25 Schulte.

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OFFICER MICHAEL SCHULTE

having been first duly sworn, was examined and testified as follows:

THE COURT: Officer, could you state your name into the microphone?

THE WITNESS: Officer Michael Schulte, S-C-H-U-L-T-E.

THE COURT: Your place of assignment?

THE WITNESS: Assigned at District 5, second shift.

THE COURT: Ms. Prosecutor?

DIRECT EXAMINATION

BY MS. GARLAND:

Q. Officer, were you so assigned on June 21, 2001?

A. Yes, I was.

Q. Okay. On that date, did you have occasion to come in contact with Antonio Moore?

A. Yes, ma'am, I did.

Q. Okay. Where did that contact occur?

A. It occurred at the Krogers on Kenard Avenue, I believe it's 4777 Kanard.

Q. What was the occasion? How did you happen to be there?

1 A. There was a detail officer that was
2 working a detail at that particular Krogers, and
3 he came over the radio and asked for a uniform
4 police vehicle to meet him at Krogers.

5 Q. When you arrived at the location,
6 what happened?

7 A. He had called reference a disorderly
8 customer, or something of that nature. When we
9 arrived there, he told us that Mr. Moore had
10 parked in a spot that was reserved for police
11 vehicles, due to the substation being located in
12 Krogers, and that the defendant refused to move
13 his vehicle and was acting, you know, disorderly,
14 you know, when Officer McNeil approached him about
15 it.

16 Q. Now, did you have an opportunity to
17 observe the defendant, once you arrived at the
18 scene?

19 A. Yes, I did.

20 Q. And what did you observe about the
21 defendant?

22 A. When I arrived on the scene, like I
23 said, I didn't know who the defendant was at
24 first. I asked the defendant (sic), you know, who
25 it was. He told me it was Mr. Moore. He was

1 standing there, was, you know, there's pillars in
2 front of the main entrance, and he was leaning
3 against the pillar, kind of with his hands
4 crossed.

5 Q. The defendant?

6 A. That's correct.

7 Q. Okay. Did you have contact with him?

8 A. Yes, I did. I asked him, you know,
9 what was going on. You know, he said that, you
10 know, the officer asked him to move his vehicle.
11 He refused, and I asked him why he wouldn't move
12 his vehicle. He said he was trying to prove a
13 point, and that, you know, we didn't have any
14 right to enforce the parking there. I explained
15 to him, you know, that was for police vehicles,
16 because there was a substation, you know, we go in
17 there to do reports, and they do details there
18 daily. You know, there was a crowd gathering, for
19 Mr. Moore -- like I said, we were standing right
20 at the main entrance, there were people going in
21 who stopped to listen, people coming out. There
22 was a small group gathering.

23 Finally, after at least ten minutes
24 of trying to talk him into moving his vehicle, you
25 know, and trying to discontinue his behavior, I

1 told him if you don't stop and move your vehicle,
2 we're going to place you under arrest for
3 disorderly conduct. And his reaction was, he
4 said, let me get this straight. If I don't stop
5 and move my car, you're gonna take me to jail. I
6 said, that's exactly what we're gonna do. He
7 said, well, fuck it then, take me to jail.

8 Q. So you placed the defendant under
9 arrest at that point?

10 A. That's correct.

11 MS. GARLAND: Nothing further.

12 CROSS-EXAMINATION

13 BY MR. PERRY:

14 Q. Why didn't you ticket the car?

15 A. I did not -- after we transported him
16 to the Justice Center, we were done with the
17 contact. We were called --

18 Q. Well, you were up at the store for a
19 while, and you talked to him; is that right?

20 A. That's correct.

21 Q. Why didn't you just ticket the car,
22 if he refused to move it?

23 A. Why did we just not ticket the car?

24 Q. Right.

25 A. I don't believe there is a section.

1 I know we can write parking tickets for blocking a
2 fire hydrant and handicapped parking, that's
3 correct.

4 Q. Well, he wasn't parked in handicapped
5 parking?

6 A. No, sir.

7 Q. He wasn't blocking a fire hydrant?

8 A. No. Like I said, it was a spot that
9 has a sign posted that says it's for police
10 vehicles.

11 Q. It says: For Police Vehicles, but
12 you do not have the authority to cite the car,
13 ticket the car?

14 A. We didn't cite the car, no.

15 Q. Could you have towed the car?

16 A. I believe we could have asked Krogers
17 to tow it, if we wanted it towed, yes.

18 Q. Did you ask Kroger to tow the car?

19 A. No, we didn't. We believed taking
20 Mr. Moore to the Justice Center was sufficient.

21 Q. When you arrived, was Tony inside the
22 Krogers or outside the Krogers?

23 A. He was outside.

24 Q. And you said that he had his arms
25 crossed, like this. He was leaning against the

1 outside on a pillar or something?

2 A. Yeah. When you walk into the Krogers
3 there's a -- like an awning, I guess, for people
4 to walk in if it's raining, and they have cement
5 pillars.

6 Q. Was it raining on this evening?

7 A. No.

8 Q. Oh, okay. So he was outside. Where
9 was the other officer?

10 A. The other officer was standing a few
11 feet away from him.

12 Q. Okay. So when you describe
13 disorderly behavior, what you're describing is a
14 man standing against the pillar with his arms
15 crossed?

16 A. Well, like I said, the behavior
17 isn't, you know, disorderly, doesn't have to be,
18 you know, you can be standing there, but your
19 vocal actions could also be disorderly, like I
20 said.

21 Q. Was he yelling?

22 A. No, but when we would say something
23 to him, he would repeat it loud enough to cause a
24 crowd to gather.

25 Q. Have you got the picture, Officer?

1 A. No, this is just my workbook.

2 Q. No, there was a picture the other
3 officer had.

4 MS. GARLAND: He must have taken it.

5 MR. PERRY: I'll ask him real quick.

6 MS. GARLAND: I'll get it.

7 Q. This photograph was taken on June 21?

8 A. Yes, it was.

9 Q. Is there anything different -- if
10 that photograph were to be taken today, would
11 there be anything different about it?

12 A. I would have to say no.

13 (Defendant's Exhibit 1 was marked for
14 identification.)

15 Q. I've just handed you what's been
16 marked as Defense Number 1. What is that a
17 photograph of?

18 A. It's a photograph of the parking --
19 the sign that's in this picture.

20 Q. It's the same sign?

21 A. No, I believe there's an additional
22 sign added at the bottom.

23 Q. Do you know if that sign was added
24 after this incident?

25 A. I imagine it was, since it's not in

1 this picture.

2 MR. PERRY: I have nothing further,
3 Judge.

4 THE COURT: Redirect?

5 MS. GARLAND: No, Your Honor.

6 THE COURT: Officer, you may step
7 down.

8 THE WITNESS: Thank you, Your Honor.
9 (Witness excused.)

10 MS. GARLAND: Your Honor, state would
11 request to move exhibit, State's Exhibit
12 Number 1 into evidence.

13 MR. PERRY: Your Honor, no objection.
14 The fact that -- maybe it's premature, but
15 I'd also like to move Defense Number 1 into
16 evidence as well.

17 THE COURT: No, I'll accept 1.
18 (State's Exhibit Number received into
19 evidence.)

20 THE COURT: I will not receive two at
21 this time. They will be admitted.

22 MS. GARLAND: Your Honor, at this
23 time the state would rest.

24 THE COURT: Mr. Perry?

25 MR. PERRY: Judge, we would like to

1 start with a Rule 29 motion for acquittal.

2 THE COURT: All right.

3 MR. PERRY: Should I argue it, Judge?

4 I will.

5 THE COURT: No. You don't need to
6 argue.

7 MS. GARLAND: Your Honor, the
8 defendant was charged with causing
9 annoyance to the officers by engaging in
10 conduct that was physically offensive and
11 served no lawful purpose. At this time he
12 caused a crowd to gather at the main
13 entrance of Krogers, speaking abusively to
14 the police officers. They requested that
15 he move his truck that was parked in a
16 space that was designated for the officers.
17 He persisted in that behavior without
18 regard to the police. The state requests
19 the Rule 29 be overruled on that basis,
20 Your Honor.

21 THE COURT: would you bring the
22 witnesses in? I'm gonna to grant the
23 motion. I'll give my reason.

24 The defense has raised a motion
25 pursuant to Rule 29, and I'm gonna grant

1 it, and I want to explain why. The
2 evidence has shown one thing beyond a
3 reasonable doubt, is that the defendant has
4 not the best of manners, I would say bad
5 manners, and your interaction, at least in
6 terms of the police officers, could have
7 been a lot better, but this is a case where
8 speech is said to be legal. And when you
9 do that, there are very specific
10 requirements on those cases. They are
11 contained in Cheplinsky (phonetic) versus
12 New Hampshire, Cincinnati versus Karla, and
13 primarily, when speech is gonna be made
14 illegal, it has to be fighting words or
15 words of such a nature that are gonna
16 provoke people to immediate violence. In
17 that case, speech will be -- can be
18 punishable. I commend both you officers
19 for giving me the testimony completely and,
20 apparently, the way it was, unfortunately,
21 the Supreme Court has said that you can say
22 F the pigs, F this, F that.

23 That alone is not illegal. Both of
24 you, the way it is described, in terms of
25 having the collateral behavior, is just not

1 sufficient enough to show that the words
2 were illegal.

3 officer Schulte, particularly, when
4 you came in, the one thing you have to do
5 is be pointed to the defendant, which means
6 the behavior was not such, at least when
7 you observed it, that you say this is
8 illegal behavior. Once things were recited
9 to you, once the defendant wouldn't leave,
10 then to charge a disorderly seemed
11 appropriate, but those words have a legal
12 meaning, not the ordinary meaning of those
13 words of the English language, very
14 disorderly, proper. Any ordinary use of
15 those words, probably. Were people
16 attracted to that location? Probably. Was
17 it inconvenient to the merchant? Maybe.
18 In terms of a crowd gathering, but were
19 these words sufficient to be construed as
20 fighting words? No, they were not.

21 And the consistent behavior that you
22 have to have, to make speech illegal, to
23 me, under the cases I've indicated
24 previously, just is not there. For that
25 reason alone I will grant the Rule 29

1 motion, but to you, sir, it's not a badge
2 of courage, you know. You've got an
3 establishment, and there will come a time
4 where you'll need and want, you know,
5 assistance. And you'll want help, and
6 there are better and more civilized ways to
7 interact. But insofar as determining this
8 conduct is guilty or not, I have to say no.
9 If there's no authority to take the car,
10 you can't use the taking of the body as a
11 substitute for the taking of the car.
12 Unfortunately, you have that gap, which is
13 no match. Rule 29 motion for judgment of
14 acquittal is grant.

15 Rule 29 for judgement of acquittal is
16 granted.

17 MR. PERRY: Thank you, Judge.

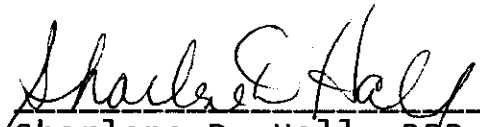
18 THE COURT: Thank you.

19 (Proceedings concluded.)
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C E R T I F I C A T E

I, Sharlene D. Hall, RPR, the undersigned,
do hereby certify that at the time and place
stated herein, I did transcribe Shannon Schmitt's
stenotype and thereafter did transcribe
said stenographic notes into typewriting the
within (22) pages; and that the foregoing
transcript of proceedings is a true, complete and
accurate transcription of said stenographic notes.

IN WITNESS WHEREOF, I have hereunto set my
hand at Cincinnati, Ohio, on this 15th day of
January, 2002.


Sharlene D. Hall, RPR
Official Court reporter

HAMILTON COUNTY MUNICIPAL COURT
JOURNAL ENTRY - MITTIMUS

CASE: 01-CRB-20479

JUDGE:

DEFENDANT: Moore Antonio

CTLNO: 173353 TICKET:

PROB. VIOL: _____

SEC. VIOL: 2917-11A
CHARGE: DC

ARREST DATE: 6.21.01
JMS_NUMBER:
SEX: D.O.B. 2.9.59
DEF. COUNSEL: ED PERRY
PROS. WIT:

CLERK'S USE ONLY		
INITIALS: _____		
PAYMENT DATE: _____	RECEIPT NO: _____	
FINE: _____	COSTS: _____	CONCAR: _____
WIT FEES: _____	JURY FEES: _____	P.D. FEES: _____
CLIP FEE: _____	BMV FEE: _____	TOTAL PAID: _____

TO THE SHERIFF OF HAMILTON COUNTY, GREETINGS: Where as, the above defendant was arrested and charged with the above section number. For good cause shown, the defendant is ordered to give bail in the sum indicated below. You are, therefore, commanded to receive the defendant into your custody until the trial date, or until he/she gives bail as ordered. Or, whereas, the above defendant, having been tried and convicted of said charge(s) is sentenced, as indicated below. Therefore, we command you to receive the defendant into your custody, there to remain until he/she has fully executed the terms of the sentence, or until otherwise discharged by due course of law.

DATE	ACTION	SIGNATURE OF JUDGE
	<p>Arraignment - Probable cause to hold demonstrated () YES () NO</p> <p>THE BOND SHALL BE \$ _____ MAY BE AT 10% () YES () NO</p>	
<u>7.24.01</u>	<p><u>NOT Guilty - Rule 29 Motion for</u></p> <p><u>judgment of Acquittal at close</u></p> <p><u>of State's case granted. No fighting</u></p> <p><u>words</u></p>	<u>Burperry</u>
	<p>I, Gregory Hartmann, Clerk of the Hamilton County Municipal Court, Hamilton County, Ohio, hereby certify the above to be a true and correct copy of the original.</p> <p>By <u>[Signature]</u> Deputy Court Clerk</p>	

